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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,129	12/11/2003	Peter A. Chapman	MAVERICK 3.0-004 CONT CON	7852
530 7590 02/08/2008 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER VERBITSKY, GAIL KAPLAN	
			ART UNIT 2855	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/733,129	<b>Applicant(s)</b> CHAPMAN ET AL.	
	<b>Examiner</b> Gail Verbitsky	<b>Art Unit</b> 2855	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 8, 10, 12, 14-15 and 19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle et al. (U.S. 5939974) [hereinafter Heagle] in view of Tymkewicz.

Heagle discloses a device in the field of applicant's endeavor comprising a first hand-held food thermometer/ probe/ data logger (first unit/ block 81, Fig. 2, col. 7, line 57) communicating by means of RF with a second unit to transmit cooking parameters. This would imply that the first and the second units have an RF transmitter and an RF receiver respectively. The first unit has an LCD (col. 10, line 28). The second unit is a computer (col. 11, lines 4-15 and col. 17, lines 31-39), thus, inherently, having a microprocessor and a display. The device also has an audible signal generated by a noise-generating unit in the first unit. Although, Heagle is silent so as to having a second LCD, it is very well known in the art, that the majority of the modern computers having LCD. Heagle teaches that the information shown on the display of the first unit is shown on the display of the second unit (abstract).

Heagle does not explicitly teach that the microprocessor is operable to calibrate a taste preference/ choice preference (beef, chicken, etc., rare, well done, etc.), the second unit is a hand held (portable) unit, as stated in claim 1, a microprocessor operative to calibrate a taste

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preference and a choice preference, as stated in claim 1, with the remaining limitations of claims 1, 3-5, 8, 10, 12, 14-15 and 19.

With respect to the second unit/ computer being a hand held (portable) unit: this particular limitation (making the unit hand held/ portable would not render the claims patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected results. See Ranco, Inc. v. Gwynn et al., 128 F.2d 437 [54 USPQ 3]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit disclosed by Heagle, so as to make it portable/ hand-held second unit, in order to allow the second unit to follow the operator and allow the operator to perform other work while waiting for the food being cooked.

Tymkewicz discloses a device in the field of applicant's endeavor comprising a microprocessor operative to calibrate (establish temperature setting) for taste preference (medium, rare, etc.) and choice preference (beef, poultry, etc.) associated with a food being cooked, establishing temperature, monitoring and displaying on (first) LCD the temperature and taste preferences. The device operates in both, Celsius and Fahrenheit.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the functions of the microcontroller/ microprocessor, disclosed by Heagle, so as to have a microprocessor operative to calibrate, establish a temperature setting, as taught by Tymkewicz, in order to have more accurate temperature results, and allow to convey the temperature data to the operator.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit so as to have a display displaying both Fahrenheit and/ or Celsius temperatures, as taught by Tymkewicz, so as to allow to use the device in Europe should the device be relocated/ exported.

3. Claims 6 and 16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz, as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of May.

Heagle and Tymkewicz disclose the device stated above.

They do not teach that the second unit having an audible/ noise-generating unit, as stated in claims 6 and 16.

May discloses a device in the field of applicant's endeavor wherein a remote second unit/ hand-held unit/ personal computer having a microprocessor and video and sound (noise generating) interface.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit disclosed by Heagle and Tymkewicz, so as to have a noise generating unit/ sound interface, as taught by May, in order to attract the operator attention even when the operator not in a close vicinity of neither first nor second unit, so as to enable the operator to take necessary actions.

4. Claims 2 and 13 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of Chung et al. (U.S. des.418069).

Heagle and Tymkewicz disclose the device as stated above.

They do not explicitly teach the limitations of claims 2 and 13.

Chung discloses a device in the field of applicant's endeavor comprising a first hand-held unit having a curved rigid probe and a flexible cable (communication line). The curved rigid probe has proximal and distal ends and attached to the line by means of a removable plug, a jack adapted to receive the plug, as shown in Fig. 1. The pointed probe end is adapted to be inserted into a food of interest. The device has a display selectively displaying food data/ meat

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selection/choice (i.e., beef, chicken, etc.), and thus, inherently a processor (microprocessor) operative to calibrate for said meat selection/ choice.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit disclosed by Heagle and Tymkewicz, so as to have the curved rigid probe with a plug and a flexible communication line, as taught by Chung, so as to enable the operator to comfortably insert the probe into the food of interest from any position.

5. Claims 7, 11 and 17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of Cooper (U.S. 4131786).

Heagle and Tymkewicz disclose the device as stated above.

They do not explicitly teach that the second unit is adapted to display time remaining, and having a timer, as stated in claims 7 and 11.

Cooper discloses a device in the field of applicant's endeavor comprising a first unit and a remote control (second) unit 28 having an on/ off, display, cooking temperature and duration control button 24. All data can be entered and seen on either unit. Time duration/ remaining time can be displayed (col. 4, lines 8-14) on both displays, inherently, including the second unit display.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit so as to display a duration/ remaining time on the second unit display, as taught by Cooper, in order to allow the operator to plan their time accordingly.

6. Claims 6 and 16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of Holling et al. (U.S. 5378874) [hereinafter Holling].

Heagle and Tymkewicz disclose the device as stated above.

They do not explicitly teach the limitations of claims 6, 16.

Holling discloses a device in the field of applicant's endeavor comprising a remote (second) unit having an alarm (noise generating device).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device, so as to provide the second unit with an alarm, as taught by Holling, so as to allow the operator to recognize the status of cooking without instantaneously looking at the display, and without attending the first location.

7. Claim 18 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle and Tymkewicz as applied to claims 1, 3-5, 8, 10, 12, 14-15 and 19 above, and further in view of Archard.

Heagle and Tymkewicz disclose the device as stated above.

They do not explicitly teach the limitations of claim 18.

Archard discloses a device in the field of applicant's endeavor comprising a first hand-held unit displaying taste preferences such as medium, medium rare, rare, well done. The device also has an alarm/ audible signal (noise-generating unit) indicating that the temperature corresponding to the taste preferences (established/ preprogrammed) has been reached.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the alarm/ audible signal, disclosed by Heagley and Tymkewicz, so as to make an audible sound when the established temperature has been reached, as taught by Archard, in order to allow the operator to recognize how the food is being cooked and make necessary changes in the cooking programming, if it is desired.

***Response to Arguments***

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Applicant's arguments with respect to claims 1-8, 10-19 have been considered but they are persuasive.

Applicant states that Heagle does not teach a second hand-held unit. This argument is not persuasive because Heagle teaches that the second unit is a computer, given the fact that we have the computers of various sizes in the art in our days (i.e., portable/ laptop, notebook and palm computers), the computers, in the broadest reasonable interpretation, are considered to be hand-held devices since they can be carried by the operator.

Applicant states that Tymkewicz does not teach a microprocessor calibrating for taste preferences and choice preferences. This argument is not persuasive because, A) the microprocessor of Tymkewicz performs not only calibration for offset (as during manufacturing), as well known in the art and described in col. 7, lines 25-35), but in addition, the microprocessor of Tymkewicz performs calibration for taste (i.e., well done) and choice (i.e., pork) preferences, as described in the text and shown in Fig. 7: the microprocessor controls the display; when the appropriate taste/ choice is selected by the operator, the microprocessor corresponds it with an appropriate cooking temperature, thus calibrating by selecting appropriate/ known temperature corresponding to a given/ known mode (col. 7, lines 1-15 and lines 50-59).

Applicant states that neither Chung nor Archard disclose a microprocessor. This argument is not persuasive, because both of them are teaching a digital circuit/ IC/ chip controlling the device. Even if they do not call it a "microprocessor", this digital chip is still considered to be a microprocessing/ microcontrolling circuit. Please note, that in the broadest reasonable interpretation, a digital chip circuit performing all processing/ controlling function for the device is considered to be a microprocessor.



Applicant states that May does not teach a second hand held unit but discloses a personal desk computer. This argument is not persuasive because any personal desk computer could be hold by a hand (please refer to the arguments above).

Applicant states that Cooper discloses a remote controlled oven (not hand held devices). This argument is not persuasive because in the rejection on the merits, the Examiner uses Cooper as secondary references only for its teaching of displaying of duration/ remaining time of cooking.

Applicant states that Holling is not pertinent (non-analogous?). This argument is not persuasive because in the rejection on the merits, the Examiner uses Holling as a secondary reference only for its teaching that the remote/ second unit can have an alarm. Also, please note, that it has been held that the determination that a reference is from non-analogous art is twofold. First, we decide if the reference is within the filed of inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 202 USPQ 171, 174.

Applicant's arguments about selling the claimed invention are irrelevant to the present rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

*Gail Verbitsky*  
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January 25, 2008